IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 328 OF 2007.

Rampat C.Yadav and another. ... Appellants.

Versus.

Ramjibhai Shah. ... Respondent.

Shri R.R.Tiwari for the Appellants.

Shri R.M.Pandye for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 15th June, 2007.

P.C.:

1. On the oral prayer made by the Advocate for the Appellants, the order passed by this Court dismissing the Appeal for default is restored.

2. The Appellants are the original Plaintiffs. By the impugned order passed on 1st March 2007, the learned trial Judge has declined to grant ad-interim relief in favour of the Appellants.

3. The learned Advocate for the Appellant invited my attention to the impugned order and pointed out that the observation made by the learned trial Judge about the date of purchase of the stamp paper of the document dated 28th June 1946 is totally contrary to the document itself. He has produced for my perusal the original document dated 28th June 1946. He also referred to the averments made in the plaint and other relevant documents placed on record.

4. There is merit in the first submission made by the Advocate for the Appellant as regards the date on which the stamp paper of the document dated 28th June 1946 was purchased. A perusal of the original document shows that the observation made by the learned trial Judge is clearly incorrect.

5. The averments made in the plaint show that the Appellant is claiming to be the owner of the suit property by adverse possession. From 1st March 2007, there is no ad-interim relief operating in favour of the Appellants. No other legal right is claimed by the Appellant in respect of the suit property.

6. The impugned order is a discretionary order passed on the equitable considerations. At this stage no interference can be made with the impugned order. However, Notice of Motion taken out by the Appellant will have to be heard expeditiously. The Notice of Motion will have to be heard without being influenced by the tentative findings recorded in the impugned order.

7. Hence the following order is passed:

(i) The Appeal is dismissed.

(ii) The pending Notice of Motion shall be decided by the trial Court as expeditiously as possible and within a period of six weeks from the date of production of an authenticated copy of this order.

(iii) All contentions on merits are kept open. It is obvious that while deciding the notice of motion, the trial Court will not be influenced by the findings recorded in the impugned order and the confirmation thereof by this Court.

Judge.